

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN R. DURSO, JOSEPH FONTANO, :
JACK CAFFEY, DEBRA SERVIDO, :
FALLON AGER NELSON, JON :
GREENFIELD, JOHN CATSIMATIDIS, :
ANGELO AVENA, MORTON SLOAN, and :
JACOB DIMANT, as Trustees and :
Fiduciaries of the LOCAL 338 :
RETIREMENT FUND, :
:

Plaintiffs, :

– against – :

235 FOOD CORP., 2497 HOLDING CORP., :
2497 REALTY CORP., 2541 FOOD CORP., :
2919 LEHIGH FOOD CORP., :
A&C DEVELOPMENT PARTNERS LLC, :
ARCON CORP., CROWN 148 LLC, :
CROWN 31 LLC, CROWN 49 LLC, :
CROWN KINGSLAND LLC, M&M :
MANAGEMENT CO. LLC, and :
PARSONS FOOD CORP., :
:

Defendants. :
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JOSEPH F. BIANCO, District Judge:

ORDER
15-CV-5086 (JFB) (GRB)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT
★ SEP 19 2017
LONG ISLAND CITY, N.Y.

On March 6, 2017, the Court issued an Order granting plaintiffs' motion for default judgment against defendants 235 Food Corporation, 2497 Realty Corporation, 2541 Food Corporation, A&C Development Partners LLC, Arcon Corporation, Crown 31 LLC, Crown 49 LLC, Crown Kingsland LLC, M&M Management Co. LLC, and Parsons Food Corporation (the "defendants"). (Dkt. No. 42.) By the same Order, the Court referred this matter to Magistrate Judge Gary R. Brown for a Report and Recommendation to address the issue of damages and other relief sought by plaintiffs. (*Id.*) On August 31, 2017, Magistrate Judge Brown issued a Report and Recommendation (the "R&R," Dkt No. 49), recommending that the Court award plaintiffs, in

connection with the default judgment against defendants, damages in the amount of \$108,821.95,¹ representing (1) \$31,212.00 in withdrawal liability; (2) \$33,484.23 in interest on the withdrawal liability; (3) \$33,484.23 in liquidated damages; (4) \$7,493.75 in attorneys' fees; and (5) \$3,147.74 in costs. The R&R was served on defendants on September 1, 2017. (Dkt. No. 50.) The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R, *i.e.*, by September 15, 2017. (R&R 2.) The date for filing any objections has thus expired, and defendants have not filed any objections to the R&R. For the reasons set forth below, the Court adopts the thorough and well-reasoned R&R in its entirety.

Where there are no objections to a report and recommendation issued by a magistrate judge, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); *cf.* 28 U.S.C. § 636(b)(1)(c) *and* Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.'" (quoting *Thomas*, 474 U.S.

¹ The R&R also recommends that plaintiffs be awarded additional interest on the withdrawal liability at the rate of \$15.39 per day from December 17, 2016 until the date judgment is entered, as well as additional interest added to the liquidated damages at a rate of \$15.39 per day from December 17, 2016 until the date judgment is entered.

at 155)).

Although defendants have waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the full record and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety. Accordingly,

IT IS HEREBY ORDERED that a judgment by default is entered in favor of plaintiffs as against defendants 235 Food Corporation, 2497 Realty Corporation, 2541 Food Corporation, A&C Development Partners LLC, Arcon Corporation, Crown 31 LLC, Crown 49 LLC, Crown Kingsland LLC, M&M Management Co. LLC, and Parsons Food Corporation as follows:

- (1) \$31,212.00 in withdrawal liability;
- (2) \$33,484.23 in interest on the withdrawal liability, plus \$15.39 per day, from December 17, 2016 until the date judgment is entered;
- (3) \$33,484.23 in liquidated damages, plus \$15.39 per day, from December 17, 2016 until the date judgment is entered;
- (4) \$7,493.75 in attorneys' fees; and
- (5) \$3,147.74 in costs.

IT IS FURTHER ORDERED that the Clerk of the Court enter judgment accordingly and close this case.

IT IS FURTHER ORDERED that plaintiffs serve a copy of this Order on defendants and file proof of service with the Court.

SO ORDERED.

s/ Joseph F. Bianco

JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: September 19, 2017
Central Islip, NY